

REMARKS

The Office Action has been received and carefully considered. Claims 30-36 and 45-59 are pending in this application. By this Amendment, claims 30, 55, 58 and 59 are amended.

No new matter has been added by this Amendment. Support for the amended claims may be found in paragraphs 0094 - 0096 of the published patent application (2002/0194098), for example.

Reconsideration of the current rejections in the present application is respectfully requested based on the following remarks.

A. **THE INDEFINITENESS REJECTION OF THE CLAIMS**

On page 4 of the Office Action, claims 30-36 and 45-49 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. In particular, the Examiner alleges that it is unclear how a balance would be stored in the adjustment account if the periodic retirement income payment is less than the guaranteed minimum payment. This rejection is hereby respectfully traversed.

Applicant has carefully considered the Examiner's comments in the Office Action.

In particular, Applicant notes the comments on page 2 of the Office Action. Therein, the Action asserts:

3. The applicant argues the 112 2nd rejection on pages 7-9 of the applicant response. **The applicant appears to be claiming that in the specific instance of claim 30 the account goes negative.** The examiner is not stating that accounts can never go negative. The examiner is merely pointing out that the claims are unclear. Traditionally accounts are set up to specifically be able to handle a negative balance. Further the claim is "storing a balance," within the context of the claim there is a left over value that is stored in an account. **There is nothing left over to be stored in a specific account if the**

period retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount. The examiner can not locate in the specification that specifically states that when the account value goes **negative**. Does the applicant mean to claim that the difference is stored or even that an adjustment is stored?

(emphasis added)

Applicant respectfully submits that the suppositions, upon which the alleged indefiniteness appears to be based, are misplaced. That is, as reflected above, the Office Action asserts “There is nothing left over to be stored in a specific account if the period retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount.” However, this assertion is misplaced and simply does not follow. In particular, Applicant notes paragraphs 0094 - 0097 of the published patent application (US 2002/0194098) and the examples of paragraph 0095.

To explain further, it appears the Office Action is looking to asserted relationships between the asserted account, the period retirement income payment amount, and the guaranteed minimum periodic retirement income payment amount which do not follow. Based on these misplaced asserted relationships, the Office Action then asserts indefiniteness under 35 U.S.C. 112.

Accordingly, Applicant respectfully submits that the assertions upon which the 35 U.S.C. 112 rejection is based are deficient. As a result, Applicant respectfully submits the 35 U.S.C. 112 rejection is deficient.

In view of the foregoing, it is respectfully requested that the aforementioned indefiniteness rejection under 35 U.S.C. 112 be withdrawn.

B. THE ANTICIPATION REJECTION OF THE CLAIMS

On page 6 of the Office Action, claims 30-36 and 45-59 are rejected under 35 U.S.C. § 102(e) as being anticipated by Dellinger (U.S. Patent No. 7,089,201). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. “In addition, the prior art reference must be enabling.” Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id.

In the Response to Arguments, on page 3, the Office Action asserts

5. The applicant argues starting on page 11 the Dellinger does not teach an equity module. The examiner respectfully disagrees. Because applicants can be their own lexicographers the prior art does not need to teach the specific phrase "equity module." The prior art merely needs to teach everything that the applicant is doing. **As long as the prior art teaches the functionality of the invention the prior art is not required to teach the specific phrase "equity module."** Dellinger teaches receiving an income generating payment and outputting a period retirement income payment. The applicant argues that the reference is not fairly interpreted. The examiner respectfully disagrees. Dellinger teaches an annuity based retirement program. **Specifically an annuity that generates retirement income. Further an annuity is well known in the art to contain stocks, it is also specifically mentioned in the background of the prior art.** Because

stocks represent an ownership in a company, stocks are considered a type of equity. Thus using an example of an annuity made up of stocks which generates a retirement income as taught by Dellinger, Dellinger teaches an equity module.

(emphasis added)

Claim 30 is amended to further recite Applicant's claimed invention and further distinguish over the applied art to Dellinger. In particular, claim 30 is amended to set forth:

an equity module, tangibly embodied on a computer readable medium, to receive an income generating payment and to output a periodic retirement income payment amount wherein the periodic retirement income payment amount is determined, by the equity module, to be greater than, equal to, or less than a guaranteed minimum periodic retirement income payment amount, such determination performed based on whether the income generating payments received are received according to a predetermined payment schedule;

Applicant respectfully submits that, based on the above comments, the rejection essentially relies on a processor that processes an annuity based retirement program, and provides the related functionality (as reflected in the excerpt from the Office Action set forth above). Applicant submits that amended claim 30 clearly distinguishes over such teachings.

Applicant acknowledges that patentability cannot be based on a distinction resting in semantics. However, Applicant submits that the amendments to claim 30 provide functional features that distinguish over the teachings of Dellinger.

For at least these reasons, Applicant respectfully submits that claim 30 is allowable over Dellinger. Independent claims 55, 58 and 59 are allowable for similar reasons.

Regarding claims 31-36, 45-54 and 56-57, these claims are variously dependent upon independent claims 30, 55, 58, and 59. Thus, since the independent claims should be allowable as discussed above, the dependent claims should also be allowable at least by virtue of their dependency on such independent claims. Moreover, these claims recite additional features which are not disclosed, or suggested, by the applied art taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection be withdrawn.

C. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees and additional claim fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

By: /James R. Miner/
James R. Miner
Registration No. 40,444

HUNTON & WILLIAMS, LLP
1900 K Street, NW
Washington, D.C. 20006
Tel. (202) 955-1500
Fax (202) 778-2201

Dated: **December 9, 2009**

JRM/PTO/12-09-09/